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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 *,) CASE NO. CV*-AHM(*)
12) ORDER REGARDING SETTLEMENT
13) CONFERENCE BEFORE THIS COURT
14 Plaintiff(s),) Settlement Conference Date:
15 v.) Time: p.m.
16 , et al.,)
17 Defendant(s).)
18 _____)

19 **PLEASE READ THIS ORDER AND LOCAL RULE 16-15 CAREFULLY**

20 The Court has agreed to conduct the settlement conference in this matter. The
21 Court has a keen interest in helping the parties achieve settlement. To facilitate the
22 settlement conference, the Court hereby orders as follows:

23 **1. Settlement Conference Date.** [The parties should contact the Clerk of the Court
24 to arrange a mutually agreeable date for the settlement conference to take place.] OR
25 [The Court hereby schedules this case for a Mandatory Settlement Conference at
26 _____.]

27 **2. Confidentiality.** Pursuant to Local Rule 16-15, all settlement proceedings shall
28 be confidential and no statement made therein shall be admissible in any proceeding in

1 the case, unless the parties otherwise agree. No part of a settlement proceeding shall be
2 reported or otherwise recorded without the consent of the parties except for any
3 memorialization of a settlement.

4 **3. Consultation with Clients Before Settlement Conference.** Before the settlement
5 conference, the attorneys are directed to explore the parameters of possible settlement
6 with their respective clients and insurance representatives. Counsel should disclose in
7 writing, although not necessarily in formal, itemized budget form, the amount it will
8 realistically cost to continue the case through trial and appeal. At the conference itself,
9 counsel will be required to confirm that they have done so, and each party will be
10 expected to discuss all economic and non-economic factors relevant to reaching a full and
11 final settlement.

12 **4. Exchanging Settlement Offers Before Settlement Conference.** In order to
13 provide the parties with a starting point for their settlement discussions with the Court,
14 Plaintiff(s) shall advise Defendant(s) of the terms upon which Plaintiff(s) then is prepared
15 to settle the case, in a letter delivered or faxed no later than seven (7) calendar days prior
16 to the settlement conference. Within forty-eight (48) hours of receipt of Plaintiff(s)'s
17 settlement offer, Defendant(s) shall respond to the same by letter delivered or faxed
18 advising Plaintiff(s) of the terms upon which they are prepared to settle the case. Counsel
19 shall bring copies of those letters to the settlement conference.

20 **5. Settlement Conference Statements.**

21 (a) Statements That Are Exchanged.

22 No later than three (3) court days prior to the settlement conference,
23 the parties shall deliver directly to the Court's chambers their separate
24 settlement conference statements and shall fax or personally deliver their
25 statement to opposing counsel. The statement, which shall be brief and to
26 the point and may not exceed 10 double-spaced pages, shall include (1) a
27 succinct statement of the facts of the case, including claims and defenses
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1 remaining to be tried and the party's position on each issue; (2) an itemized
2 statement of the damages claimed, in non-conclusory form; and (3) a
3 summary of the history of past settlement discussions and offers and
4 demands, including the most recent settlement offers exchanged pursuant
5 to paragraph 4 of this Order. The statements shall also disclose the parties'
6 positions about non-monetary terms that they may seek (or oppose).
7 Depending on the case, such statements should include (but are not
8 necessarily limited to): the form and scope of releases -- e.g., general and/or
9 specific; waiver of California Civil Code § 1542; releases of and/or
10 covenants not to sue third parties who either are not participants in the
11 settlement conference or are not even parties in the lawsuit, but whose
12 interests could affect the negotiating parties' ability to settle;
13 indemnifications against claims of other parties; whether there should be a
14 confidentiality provision; whether there should be recitals of non-admission
15 of fault or liability; whether each settling party is to pay his, her or its own
16 costs and attorneys' fees; and any other provision which is likely to be the
17 subject of negotiation. Each side should cite reported decisions that they
18 think support their position as to the amount (if any) of damages (including
19 punitive damages), and each side may attach a copy of published summaries
20 of comparable cases taken from publications that contain the terms and
21 amounts of settlements or verdicts. Unless absolutely essential to inform the
22 Court of key considerations, please do not attach other items, such as
23 exhibits or transcript excerpts; the purpose of the statement is to enable the
24 Court to become familiar with the issues, not to try the case. Accordingly,
25 do not include discussions of the legal principles affecting the substantive
26 claims and defenses.

1 (b) Confidential Statement.

2 Pursuant to Local Rule 16-15, each party shall also prepare a
3 Confidential Addendum to the Settlement Conference Statement, which
4 shall also be delivered to chambers but *shall not be served upon the other*
5 *parties*. The Confidential Addendum shall contain a forthright, honest
6 statement of the terms on which the case realistically can be settled; the
7 approximate amount of fees and costs expended to date; an estimate of the
8 fees and costs to be expended for future discovery, pretrial and trial; and any
9 additional information the party wishes to impart to the judge confidentially.
10 The Court relies on the Confidential Statement to ascertain the terms that the
11 parties are really prepared to accept.

12 (c) Exceptions.

13 Sometimes the foregoing requirements may be unnecessary -- *e.g.*, if
14 there is only one relatively narrow or discrete issue that divides the parties,
15 after they have reached agreement on all, or virtually all, other material
16 terms. In such case, the parties' settlement conference statements and
17 addenda should focus on the "sticking point" issue and provide the Court
18 the background or context necessary to help break the impasse.

19 (d) Consequences of Non-Compliance

20 Failure to timely deliver a Settlement Conference Statement and
21 Confidential Addendum will likely result in sanctions being imposed.

22 **6. Persons to be Present at Settlement Conference.** All persons whose consent is
23 necessary to conclude settlement shall be present personally. This means the individual
24 with the authority to say "yes," not just "no." As an exception, out-of-district parties, or
25 agents empowered to settle may be available by telephone, provided they are absolutely
26 committed to remaining available at the telephone (regardless of the hour) until released
27 by the Court and further provided that a written request for their participation by
28 telephone is submitted to and approved by the Court in advance of the conference.

1 (WARNING: The Court is not always inclined to routinely permit such telephonic
2 participation.)

3 The plaintiff's representative must have full and final authority, in the
4 representative's sole discretion, to authorize dismissal of the case with prejudice, or to
5 accept a settlement amount recommended by the settlement judge down to the
6 defendant's last offer made prior to the settlement conference. The defendant's
7 representative must have final settlement authority to commit the defendant to pay, in the
8 representative's sole discretion, a settlement amount recommended by the settlement
9 judge up to the plaintiff's prayer (excluding punitive damage prayers), or up to the
10 plaintiff's last demand made prior to the settlement conference, whichever is lower.

11 Counsel appearing without their clients and/or the person or persons whose
12 presence is required to achieve settlement (such as insurance representatives) will cause
13 the settlement conference to be canceled and rescheduled, *regardless of whether counsel*
14 *purportedly has been given settlement authority*. (This will not result if the Court granted
15 prior authorization for the client to participate telephonically.) The noncomplying party,
16 attorney, or both, may be assessed the costs and expenses incurred by other parties as a
17 result of such cancellation and rescheduling.

18 If a settlement proposal must be presented to a board or committee, the attendance
19 of at least one sitting and knowledgeable member of the Board (preferably the
20 Chairperson) is *absolutely required*, unless the entity commits absolutely to the
21 discretionary authority of another representative.

22 In lawsuits involving the United States or any of its agencies, the Assistant U.S.
23 Attorney in charge of the case must appear with the full measure of settlement authority
24 provided by his or her superiors within the United States Attorneys' Office.

25 Any insurance company that is a party to the case or is contractually required to
26 defend or to pay damages assessed within policy limits, must have a settlement
27 representative present at the conference. Such representative must have final settlement
28 authority to commit the company to pay, in the representative's sole discretion, an

1 amount recommended by the settlement judge within the policy limits. The purpose of
2 this requirement is to have an insurance representative present who can settle the
3 outstanding claim or claims during the course of the conference without consulting a
4 superior. An insurance representative authorized to pay, in his or her sole discretion, up
5 to the plaintiff's last demand made prior to the settlement conference will also satisfy this
6 requirement. Counsel of record will be responsible for timely advising any involved non-
7 party insurance company of the requirements of this Order.

8 **7. Conduct of Settlement Conference.** The Court may, in its discretion, converse
9 with the lawyers, the parties, the insurance representatives, or any one of them outside of
10 the hearing of the others. The comments of the Court during such separate sessions are
11 not to be used by counsel in settlement negotiations with opposing counsel. This is a
12 necessary requirement in order to avoid intentional or unintentional misquotation of the
13 Court's comments. Violation of this policy may mislead the adverse party and therefore
14 hinder settlement.

15 At the commencement of the settlement conference, each party through counsel
16 may be required to make an oral presentation (not to exceed 10 minutes) of the relevant
17 facts *and* law, in the presence of all parties and counsel.

18 If settlement between any or all parties is reached as a result of the Settlement
19 Conference, the Court will enter the settlement terms on the record at the end of the
20 conference and the parties will be expected to assent to those terms, at which point the
21 settlement will be final and binding.

22 All papers submitted for the Settlement Conference will either be returned to the
23 parties or destroyed by the Court after the settlement proceedings are concluded, unless
24 the parties otherwise agree.

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1 The Court thanks the parties and their counsel for their anticipated cooperation in
2 carrying out these requirements.

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4 IT IS SO ORDERED.

5 Dated: _____
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7 A. HOWARD MATZ
United States District Judge
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